

The question proposed is whether the oiling or treatment with oil of a municipal street or thoroughfare may be deemed such a repair as to come within the meaning of the words "maintenance and repair" as occurring in this paragraph of the section.

It is believed that the words "maintenance" and "repair" as used in this section mean to include any improvement, maintenance, or repair which would tend to preserve the surface of the existing roadbed, and that such an improvement or repair is chiefly limited to those cases in which the existing foundation thereof is used as in the subsurface thereof, in whole or substantial part.

"Words and Phrases" defines the word "repair" as used in cases of road improvement as follows:

"'Repair' of a turnpike, means a filling up of holes, and an evening up of the surface in such a manner that the ordinary and expected travel of the locality, may pass with reasonable ease and safety. *Milford vs. Traction Co.*, 4 O. C. C. (N. S.) 191, 16 O. C. D. 271."

Thus it would seem that the process of street or road oiling might be considered as having the tendency and effect of making more compact, by reason of its cohesive qualities, the surface of the roadbed so treated, and of evening up the same in such a manner as to reasonably come within the meaning of the words "maintenance" and "repair" as used in the considered section.

You are therefore advised that in the opinion of this department the process of street oiling contemplated by the provisions of section 3751 to and inclusive of 3754 G. C. is such as may be included within the meaning of the words "maintenance" and "repair" occurring in the provisions of section 6309-2 of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2749.

LIGHTS—TOWNSHIP TRUSTEES NOT AUTHORIZED TO PROVIDE
LIGHTS FOR SECTION OF STREET.

Held, under the facts discussed, that township trustees are not authorized to provide artificial lights for a section of street.

COLUMBUS, OHIO, December 30, 1921.

HON. JOHN R. KING, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—Your letter of December 22, 1921, is received, reading as follows:

"Marion road is an important highway leading east from Parsons avenue in the city of Columbus, but the road lies just out of the city limits in the county of Franklin. It is located in an industrial section and a great number of workmen use the road in going to and from the factories in question. Without being lighted, its use is considered

dangerous, especially at this time of the year when workmen are going to their homes from the factories after nightfall.

In January, 1920, the board of county commissioners of Franklin county, Ohio, awarded a contract for the construction of necessary lights and lines leading from the lines of the Columbus Railway, Power and Light Company, in order to supply the necessary electricity. At the time the commissioners adopted a resolution of which the following is a part:

'Whereas, said road for said distance has become dangerous to public travel owing to the absence of sidewalks sufficient to accommodate the very large number of persons employed in the manufactories along the line thereof, compelling them to use or travel the said road, thus causing a very dangerous condition to public travel after night-fall.'

The distance referred to is approximately 2,500 feet.

In the last report of the examination of county offices, the examiner found that the county commissioners had no authority to light roads and found that the money so expended on such contract was illegally expended. We are unable to find that the county commissioners are given authority to light roads and highways, but are expressly given authority to light viaducts. The county commissioners have been paying, however, for the necessary current furnished for lighting the lines and in view of the criticism and finding contained in the above report, the county auditor has referred to our attention the matter as to whether the charges rendered by the Columbus Railway, Power and Light Company for so furnishing such current are legal. The matter has been taken up with the trustees of Marion township, in which the road is located, and in view of the public necessity for the lighting of the road they are agreeable to pay for the current from the general fund of the township, provided it can be legally done.

We desire your opinion as to whether or not the township may legally pay for the current so furnished in the lighting of Marion road under the provisions of section 3440-1 as enacted in 109 O. L. page 69, which provides that the township trustees may light such territory as constitutes 'a place of public gathering for the inhabitants of such township or a large part thereof, and such township trustees find that the public safety or welfare requires that such place be lighted.'

The township trustees of Marion township feel that it would be inadvisable to proceed under sections 3438 et seq."

The statute to which your inquiry has particular reference is section 3440-1 G. C., as enacted 109 O. L., p. 69, reading as follows:

"The township trustees of any township shall also have power to provide artificial lights for any territory within such township and outside the boundaries of any municipal corporation, when such territory constitutes a place of public gathering for the inhabitants of such township or of a large part thereof and such township trustees find that the public safety or welfare requires that such place be lighted. Such provision may be made either by installing a lighting system or by contracting with any person or corporation to furnish lights. In case such light be furnished under contract such contract may also provide that the equipment employed in supplying same may be owned

either by the township or by the person or corporation supplying same. No such contract shall be made to cover a period of more than ten years. The cost of installing and operating any such lighting system, or of any such light furnished under contract, shall be paid from the general (revenue) fund of the township treasury."

Said section was the subject of comment in a recent opinion of this department (No. 2647) rendered to Hon. Allan G. Aigler, prosecuting attorney, Norwalk, Ohio, under date December 2, 1921, copy of which is enclosed for your information. That opinion, however, may be said to have no direct bearing upon your inquiry, except to the extent of the view expressed therein that section 3440-1 G. C. was not intended to provide for general street lighting within townships.

The facts which you submit show that the place proposed to be furnished with artificial lights is an ordinary street or road. As such, it cannot be said to be territory constituting "a place of public gathering." While the phraseology of section 3440-1 G. C. is indefinite, the fact must not be lost sight of that the words "a place of public gathering" connote the idea of assemblage for a common purpose rather than the idea of a public way for travel.

For the reasons thus briefly suggested, it is the conclusion of this department that under the facts stated by you, the trustees are without authority under section 3440-1 G. C. to furnish artificial lighting for the section of street or road in question.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2750.

ROADS AND HIGHWAYS—STATE HIGHWAY IMPROVEMENT FUND
 LEVIED UNDER SECTION 1230 G. C. EXPENDED ONLY UNDER
 DIRECTION OF DEPARTMENT OF HIGHWAYS AND PUBLIC
 WORKS—NO PART OF SAME TO BE TURNED OVER TO COUNTY
 FOR EXPENDITURE.

The state highway improvement fund accruing from levy under section 1230 G. C. and apportioned as directed by section 1221 G. C. is to be expended only under the direction of the department of highways and public works and no part thereof is to be turned over to a county for expenditure.

COLUMBUS, OHIO, December 30, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

GENTLEMEN:—Your communication of recent date is received, requesting an opinion

"as to whether or not the division of highways has authority to turn over to the county its inter-county highway money for the maintenance of roads constructed by co-operation between the county and state, which construction, however, has the distinct understanding that the state will not assume maintenance."

Section 1230 G. C. reads as follows: